

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICE OF INTENT TO CLAIM COMPENSATION**

1. Summary

Pursuant to Public Utilities (Pub. Util.) Code §§ 1801-1812, Latino Issues Forum (LIF) filed a Notice of Intent (NOI) on February 4, 2004 to claim compensation for its participation in this proceeding. This ruling finds that LIF is eligible to file its claim for compensation for work conducted in this proceeding. However, consistent with the January 27, 2004 ruling in this proceeding, today's finding of eligibility is limited to work conducted by LIF on new issues added to this proceeding as a result of the January 23, 2004 prehearing conference and subsequent Assigned Commissioner's Ruling, dated February 6, 2004.

2. Timeliness of Filing

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." It also permits the Commission to accept a late filing where a party could not have reasonably identified issues within 30 days of the prehearing conference.

On December 5, 2003, LIF filed a NOI to claim compensation in this docket for work performed on the issues identified in the Assigned Commissioner's ruling dated July 3, 2003. That NOI was denied as being untimely, as discussed in an Administrative Law Judge's ruling dated January 27, 2004 (January 2004 Ruling). In denying the NOI, the ruling states:

"This ruling does not prejudice whether LIF would be found eligible should the scope of the proceeding change as a result of the prehearing conference held on January 23, 2004. LIF should file a new timely NOI following the prehearing conference if it decides to participate in upcoming phases of the proceeding."

In response to the January 2004 Ruling, LIF filed an NOI on February 4, 2004. It is timely filed.

3. Scope of Participation Eligible for Compensation

As discussed above, LIF is eligible for intervenor compensation for work on prospective issues that represent a change in scope as a result of the January 23, 2004 prehearing conference. In particular, the Assigned Commissioner and Administrative Law Judge established a procedural schedule that would accommodate the addition of energy efficiency incentives in the proceeding, per the Commission's direction in Decision (D.) 03-12-062 in the Procurement Proceeding.¹ The corollary task of establishing utility-specific energy savings goals was also added to the scope of the proceeding, and scheduled during discussions in the morning and afternoon sessions.² In

¹ In contrast, the July 3, 2003 Assigned Commissioner's ruling in this proceeding assumed that the issue of creating performance incentives for energy efficiency would be addressed in the Commission's procurement proceeding, (Rulemaking 01-10-024) and not in this docket.

² See Assigned Commissioner's Ruling dated December 22, 2003, p. 5.

response to D.03-12-062, the Assigned Commissioner also identified this docket as the forum for revising and updating the Commission's avoided-cost methodology for analyzing the costs and benefits of energy efficiency programs, including updates for externality adders. This issue was added to the scope of the proceeding and scheduling options were discussed at the January 23, 2004 prehearing conference. Accordingly, LIF is put on notice that today's ruling of eligibility is limited to the new issues added to this proceeding as a result of the January 23, 2004 prehearing conference, as identified above.

All other issues discussed and scheduled during the course of the January 23, 2004 prehearing conference and subsequent February 6, 2004 Assigned Commissioner's ruling are not new to this proceeding. The issue of program evaluation, measurement and verification (EM&V) was identified in the July 3, 2003 Assigned Commissioner's ruling as a topic for this proceeding, both in the context of assessing progress towards meeting program goals to reduce energy consumption and "if the Commission decides to award incentives for superior performance in meeting or exceeding energy efficiency goals."³ "That ruling also identified within the scope of this proceeding the issues of long-term program administration, energy savings goals for California, the selection of energy efficiency programs for 2004-2005, the development of criteria and policy rules for 2004-2005 program selection and related issues. As a foundation for addressing these issues, the Assigned Commissioner outlined a set of workshops on "customer needs," "collaboration and partnership among program implementers," and other topics prior to January 23, 2004 prehearing

³ See Assigned Commissioner's Ruling dated July 3, 2003, p. 10.

conference.⁴ Per the January 2004 Ruling, LIF is not eligible for compensation for work on these issues.

Pub. Util. Code §1804(a)(2)(A)(1) requires that the NOI include a statement of the nature and extent of the customer's planned participation. LIF states that, in addition to filing comments and participating in any workshops on incentives, it intends to participate in this proceeding on the issues of "administration" and "evaluation and measurement."⁵ However, as discussed above, the issues of administrative structure and EM&V are not new to this proceeding. In its request for compensation, LIF should clearly document how its participation contributes to the Commission's decision(s) on the new issues added as a result of the January 23, 2004 prehearing conference. As described above, the new issues are: (1) energy efficiency incentives, (2) utility-specific energy savings goals, and (3) revising and updating avoided costs.

As indicated in the Assigned Commissioner's February 6, 2004 ruling, a further prehearing conference will be held during the summer of 2004. I anticipate that some new issues will be added to the proceeding at that time, in particular, those related to the 2006 program planning cycle. LIF will be eligible to claim compensation for substantial contributions it makes to Commission decisions if it decides to participate in future phases of the proceeding.

4. Qualification as Customer and Significant Financial Hardship

Pursuant to D.98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), and identify whether the intervenor is a participant representing consumers, or a representative

⁴ See, for example, the Assigned Commissioner's September 24, 2003 ruling.

⁵ LIF's NOI, p. 4. See also page 5.

authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. If the customer category identified is “a representative authorized by a customer,” the NOI should identify “the residential customer or customers that authorized him to represent that customer.” That identification is needed because this category of customer “connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (D.98-04-059, pp. 28-30.)

Once the applicable definition of customer is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. Section 1802(g) defines “significant financial hardship.” “Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

In its NOI, LIF explains that it is authorized in its by-laws to represent the interests of residential ratepayers before regulatory agencies, and estimates that its members represent a constituency that is divided 85-15% between residential customers and small business customers, respectively. A copy of LIF’s by-laws

have been filed with the Commission in numerous other NOIs, including one filed on March 4, 1999 in Application (A.) 98-12-005. Accordingly, I find that LIF qualifies as a Category 3 customer.

LIF does not address in either the December 5, 2003 or February 4, 2004 NOI the issue of significant financial hardship. Therefore, LIF is expected to make a showing of significant financial hardship in any request for compensation in this proceeding.

5. Estimated Compensation Request

LIF presents the following estimate of compensation costs:

Attorney Fees

Fees of Susan E. Brown (100 hours at \$380/hour)	\$38,000
Fees of Enrique Gallardo (25 hours at \$265/hour)	\$ 6,625
Total	\$44,625

Expert Fees

Fees of Luis Arteaga (50 hours at \$310/hour)	\$15,500
Policy interns and fellows (25 hours at \$100)	\$ 2,500
Fees of outside experts (30 hours at \$250/hour)	\$ 7,500
Total	\$25,500

Incidental Costs

Postage, photocopies, deliveries, supplies and telephone	\$ 5,000
Travel	\$ 4,000
Total	\$79,125

The NOI fulfills the requirements of Pub. Util. Code § 1804(a)(2)(A)(ii) by including an itemized estimate of the compensation expected to be requested. Although this ruling does not address the merits of the final compensation claim by LIF, I reiterate my cautionary observations in a ruling dated October 12, 1999 in A.99-07-002 *et al.* that intervenors should carefully review Commission orders and be mindful of the areas where the Commission modified either the hourly

rates or number of hours claimed. In addition, as discussed above, LIF is required to document that the actual costs of its participation relate directly to the new issues added to this proceeding as a result of the January 23, 2004 prehearing conference.

IT IS RULED that:

1. LIF timely filed a Notice of Intent for compensation in this proceeding, pursuant to the January 2004 Ruling.
2. LIF is a Category 3 customer.
3. LIF is expected to make a showing of significant financial hardship in any request for compensation in this proceeding.
4. LIF's eligibility to claim compensation for work conducted in this proceeding is limited to the new issues added to this proceeding as a result of the January 23, 2004 prehearing conference: (1) energy efficiency incentives, (2) utility-specific energy savings goals, and (3) revising and updating avoided costs. LIF will be eligible to claim compensation for participating in future phases of this proceeding, as new issues are added as a result of prehearing conferences or by ruling.

5. Subject to a finding of significant financial hardship and the limitations discussed above, LIF is eligible for an award of compensation for substantial contributions in this proceeding.

Dated February 18, 2004, at San Francisco, California.

/s/ Meg Gottstein
Meg Gottstein
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Award on all parties of record in this proceeding or their attorneys of record.

Dated February 18, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.